Federal Trade Commission/S
Office of the Secretary
Washington, D.C. 20580

Dear Sir or Madam:

These comments are respectfully submitted some 80 days after the Commission provisionally approved the Consent Order negotiated between the Bureau of Competition and Texaco, and as the 60-day period for public comment is ending. Mindful of the heavy burdens upon the Commission, we will attempt to be brief and to the point.

1. Although the Commission has received numerous Comments, perhaps most significant is what has not been received. To our knowledge, there has been an extraordinary dearth of adverse comment from competitors 1/ -- i.e., those who would be most sensitive and alert to any remote, potential anticompetitive consequences that conceivably could flow from the merger, and most zealous in guarding against them. No competitor asserts it will be unable to compete with Texaco after the merger. Indeed, no competing explorer, producer, refiner, transporter or marketer

1/ The exception is Pennzoil (Comment 125) which conceded industry sought to control Getty and has its own axe to grind. It purports to see possible competitive concerns not in any market where Pennzoil does business but among California refiners. Pennzoil chose to litigate these and other claims of anticompetitive effects in the United States District Court in Tulsa, Oklahoma. Pennzoil Co. v. Texaco Inc., 1984-1 Trade Cas. (CCH) ¶65,848 (N.D.Oklahoma, Feb. 8, 1984); and before the Court of Appeals for the Tenth Circuit, with singular lack of success, Pennzoil Co. v. Texaco Inc., No. 84-1169 (10th Cir. Feb. 9, 1984).
claims the merger will cause any diminution in the vigor of competition in exploration, production, refining, transportation (crude or product) or marketing. 2/ The absence of such claims by competitors throughout the lengthy comment period underscores the validity of the Commission’s conclusion that this is not a merger that should be prohibited under the antitrust laws.

2. Given the Bureau of Competition’s considerable experience in the petroleum industry, the vast quantities of documents it called for and reviewed during the Hart-Scott-Rodino period and the "no stone unturned" nature of the investigation it conducted, not surprisingly none of the comments raise new competitive considerations beyond the four specific areas of potential concern dealt with by the Consent Order, to wit:

- The supply of refined light products in the Northeastern States;
- The wholesale distribution of gasoline and middle distillates in the Northeast;
- Pipeline transportation of refined light product into Colorado; and
- The sale, transportation and refining of California heavy crude oil.

2/ Putting aside the emergence of foreign governments as major factors in the energy world and focusing merely on the United States, competition still has been so intense and dynamic (e.g., the company now ranking second in crude production and first in reserves was not even among the top 20 in production in 1975) that by virtually every measure the combined shares of Texaco and Getty are now less than the percentage of the market Texaco alone enjoyed in 1975.

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<tr>
<td>U.S. Crude Production</td>
<td>3.5</td>
<td>2.7</td>
<td>6.2</td>
<td>6.7</td>
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<tr>
<td>U.S. Natural Gas Production</td>
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<td>1.8</td>
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<td>U.S. Natural Gas Reserves</td>
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<tr>
<td>U.S. Refinery Capacity</td>
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<td>6.6</td>
<td>6.5</td>
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<tr>
<td>U.S. Interstate Pipeline</td>
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<tr>
<td>Ownership</td>
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<td>0.5</td>
<td>4.6</td>
<td>7.5</td>
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<tr>
<td>U.S. Motor Gasoline Sales</td>
<td>5.6</td>
<td>1.1</td>
<td>6.7</td>
<td>7.9</td>
</tr>
<tr>
<td>U.S. Energy Producing Co.'s (BTU Basis)</td>
<td>2.2</td>
<td>1.7</td>
<td>3.9</td>
<td>4.5</td>
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3. As to the supply of refined light products in the Northeast, the perceived antitrust concern admittedly is not an immediate one (with refineries and Colonial Pipeline now operating below capacity). Even as to the future, it is somewhat conjectural and dependent upon the postulate that certain owners of Colonial might possibly join together for anticompetitive purposes. Thus, the "Analysis of Proposed Consent Order to Aid Public Comment" ("Analysis"), takes two cases:

"(1) If we ... include all refined light products that are supplied to the Northeast by each company -- Northeast refinery output, Colonial shipments, tankers from the Gulf Coast, and imports -- the Acquisition results in a change in the HHI of only 60 points, with a post-acquisition HHI of 634; (2) if we assume that certain Colonial owners with Northeast refining capacity, including Texaco, could operate Colonial and their Northeast refining capacity to maximize joint profits and that they could form a voting coalition to block an expansion or possibly raise the tariffs of Colonial, the coalition could increase its control over refining capacity through Texaco's acquisition of the Getty refinery, resulting in an increase in the HHI of 522 points and a post-acquisition HHI of 3011." (8560; emphasis added).

The potential competitive problem rests on the second case "coalition" hypothesis. On that basis, two forms of relief are included in the Consent Order. Paragraph IV requires Texaco, for 10 years, to vote for every expansion north of Dorsey Junction, Maryland, proposed by any other owner of the Colonial Pipeline. In addition, Paragraph II and Schedule A, require the divestiture of Texaco's Eagle Point refinery.

a. None of the Comments deal with the issue of whether this "potential competitive problem" is truly a realistic one, nor do any touch on whether the Paragraph IV relief might not be sufficient, particularly given the hypothetical nature of the competitive concern. Instead, they focus entirely upon the divestiture of the Eagle Point refinery and the problems of assuring its post-divestiture viability for purposes of local employment and otherwise.

b. Unless the Commission determines that the Paragraph IV relief is sufficient and that divestiture of this refinery is not competitively required or in the public interest, Texaco will fully honor its commitment to pursue its divestiture. Since the relief appears redundant and the "potential competitive problem" is
spective at best, it would be highly unfair and inappropriate for any additional burdens to be imposed upon Texaco in connection with the divestiture of the Eagle Point refinery, including such Draconian proposals as requiring it to guarantee a crude supply to the purchaser or to suffer an inability to integrate Getty's operations pending such divestiture. The proponents of such suggestions appear to have overlooked the fact that the Commission promised that "unless the Commission determines to reject the Consent Order, it will not seek further relief from Texaco with respect to the Acquisition, except that specifically provided for in the Consent Order." (Hold Separate Agreement 4).

4. With respect to the divestiture of Getty's marketing properties in the Northeast pursuant to Paragraph II, Schedule A(1), the comments relate primarily to a matter not before the Commission at this time: whether Power Test, an independent gasoline marketer, should be approved by the Commission as the proposed acquirer of such properties. The Analysis explains (8559) that before Power Test can be approved there will have to be a separate Commission determination of its qualifications following a review of written comments submitted by interested persons during a separate 30-day Public Comment period. Because of this built-in and unavoidable delay factor, and because delay and uncertainty are obviously difficult for and potentially harmful to all concerned, Texaco respectfully submits that the Commission should schedule the 30-day Public Comment period as soon as feasible.

5. Because of a potential competitive concern in relation to Texaco's 40% ownership interest in one (Wyco Pipeline), and Getty's 50% ownership interest in another light product pipeline into Colorado (Chase Pipeline), the Consent Order requires divestiture of Getty's El Dorado, Kansas refinery and related properties in 15 States, Paragraph II, Schedule A(2). The Analysis forthrightly acknowledges:

"It should be noted that Schedule A(2) of the proposed consent order requires a much broader divestiture than is required to remedy the competitive problem resulting from Texaco's increased ownership share of petroleum-product pipelines in Colorado. Divestiture of these related assets, including the marketing and refining assets connected to the pipeline, appears necessary to assure that a viable competitive entity can be divested." (8561; emphasis added).
a. Again, none of the Comments deal with whether the Colorado Pipeline problem is of serious competitive concern or with whether a provision such as Paragraph IV in respect to Colonial might be adequate relief here. No Comment contends that any anticompetitive consequence would flow from Texaco's operation of the El Dorado refinery. 3/ Instead, Comments focus on potential problems that might follow the divestiture of the El Dorado refinery and the other transportation and marketing properties. Indeed, customers, public officials and others contend that it would be competitively preferable for Texaco to operate the El Dorado system than for it to be sold.

b. Although divestiture of the Kansas refinery admittedly is at least one step removed from the Colorado pipeline problem which is its justification, if the Commission still wishes Texaco to do so, Texaco will fully comply with all of the divestiture obligations to which it committed itself, as specified in Schedule A(2). Again, however, it would be utterly inappropriate and unfair for the Government to attempt to add further onerous burdens on Texaco in connection with such divestitures and to mandate long-term supply guarantees.

c. The acquirers of divested properties surely will not be investing millions of dollars to close down operations and lose their investment. They are likely to appreciate the potential and be ready, willing and able to give the business the type of support and commitment needed to realize that potential. The management of an acquirer will have to be satisfied it can do this; its board and possibly its bankers will have to be satisfied and, more, the Commission will have to be satisfied. Whether an acquirer will want more or fewer assets or will want or not want to negotiate for some form of supply arrangement with Texaco or with other companies, will depend, of course, upon the acquirer. Since so much will depend upon the

3/ Texaco has no refinery in Kansas or in any contiguous state. Outside of Texas, its only refinery in any of the 15 states is in Lawrenceville, Illinois. Getty's only refinery in any of the 15 states is that in El Dorado.
acquirer, 4/ and since the approval process is a cumbersome one, it is desirable that the process begin forthwith once the Commission finally determines that the divestitures are needed.

d. Alternatively, given the urgent concerns of public officials and citizens about the consequences of a divestiture of the El Dorado refinery (and given the lack of any antitrust ground compelling such divestiture), Texaco is willing to keep and operate the El Dorado refinery and the related properties described in Schedule A (2) and to agree to other relief to resolve the Colorado pipelines problem. If the Commission concludes pipeline voting restrictions might prove insufficient by themselves, Texaco would agree to dispose of some or all of its 40% interest in the Wyco Pipeline or some or all of the 50% Getty interest on the Chase Pipeline, and would do so either now or at any time over the next 10 years that the Commission perceives any need for Texaco to do so. Also, should the Commission believe there might be a competitive problem were Texaco to retain all of Getty's wholesale marketing assets and service stations in Colorado and/or Oklahoma, Texaco would sell whatever such assets the FTC requires.

6. The Consent Order's Getty California produced crude relief provisions (Paragraph V, Schedule B) are premised, as the Analysis explains, on the possibility that: "As a result of the Acquisition, Texaco may have some incentives to divert the Getty [California] heavy crude oil to its own refinery system". (8562; emphasis added) Since Getty and Texaco each have only a rather small refinery in California, 5/ any such diversion "to

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4/ See attached copy of my letter dated April 27, 1984 to Mr. Schildkraut on the availability of crude oil in Kansas. Since under the present Consent Order Texaco is required to sell the El Dorado system, it has made the following commitment, which we request be included in the Consent Order with respect to supplying crude oil to the El Dorado refinery:

"Texaco is committed to being the 'crude oil supplier of last resort' and will negotiate with the purchaser for the sale of crude oil on commercial terms in the extremely remote and unforeseeable event that Texaco, or a subsequent trustee, cannot sell the refinery because a prospective purchaser is unable to physically acquire crude oil supplies for the refinery."

5/ The Getty refinery (50,000 BCD capacity) accounts for only about 2% of California refinery capacity and the Texaco refinery (75,000 BCD capacity) for 3%. (Oil and Gas Journal, March 26, 1984, pp. 113-14).
[Texaco's] own refinery system" in that State would be relatively minimal. Accordingly, to find the possibility of any meaningful diversion, the Analysis first includes Texaco's 78,000 BCD refinery in Anacortes, Washington, and then speculates that Texaco may some day acquire other refineries from unspecified independent refiners in California. Thus, the Analysis states:

"Getty's [California] crude oil production is about 100 MBD in excess of the operating capacity of its one small refinery in California. Texaco, on the other hand, refines more crude than it produces on the West Coast, with production of only 33 MBD in California, compared to about 153 MBD in refining capacity in California and Washington. (8561; emphasis added)

*   *   *

"Certain non-integrated California refiners might be vulnerable if Texaco should decide to utilize Getty heavy crude oil in this manner [i.e., diverting it to Texaco's own refining system]. *** If these refineries were to fail and Texaco were to acquire them in order to process additional heavy crude oil, the West Coast refining HHI would increase by 74 points to 1206" (8562; emphasis added)

a. Respectfully, neither speculation is warranted and thus no factual basis exists for any California competitive concern.

(1) Texaco's Washington refinery is not designed to handle California heavy crude oil; 7/ Texaco has never refined any California heavy crude there; and it would not be economic to transport California heavy crude there for processing even if the Washington refinery were converted to run such crude. Hence, the concern that Texaco would divert Getty's California heavy crude to Washington simply is not a reasonable one.

6/ Over 45% of the crude being run at Texaco's California refinery (33,000 BPD out of 71,000 BPD) comes from Texaco's own California production; about 28% consists of Alaskan North Slope crude (app. 20,000 BPD); about 11% comes from Elk Hills (8100 BPD) and the balance of about 10,000 BPD consists of various Los Angeles Basin crudes.

7/ Of the approximately 75,000 BCD of crude oil being refined there, about 65,000 is Alaskan North Slope and about 10,000 is Canadian.
(2) Even assuming arguendo that Texaco were to move 78 MBD of such crude to Washington and that this were to have an adverse impact on some non-integrated refiners, surely it would still be premature to guess now whether Texaco would then want to acquire any of such refineries (let alone all of them) and would then be able to do so.

Focusing on the present Acquisition rather than on what might happen if some other future acquisitions take place, leaves no ground for claiming antitrust violation. 3/

b. Although justification for the California relief is tenuous at best, Texaco is committed to abide by the Consent Order's provisions and will do so. Again, any attempt to

3/ Texaco's customers for California crude oil have included independent non-integrated refiners for well over the past quarter century, including in 1983 sales and exchanges with the following:

<table>
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<th>Company</th>
<th>Barrels Delivered Exchanges</th>
<th>Barrels Delivered Sales</th>
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<tr>
<td>Alliance Oil</td>
<td>116,000.00</td>
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<tr>
<td>Beacon Oil</td>
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<td>Caljet Crude Oil</td>
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<td>Century Resources</td>
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<td>Champlin Petroleum</td>
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<tr>
<td>Clark Oil</td>
<td></td>
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<tr>
<td>Crysen Trading</td>
<td>148,910.00</td>
<td>87,873.21</td>
</tr>
<tr>
<td>Huntway Refining</td>
<td>13,044.07</td>
<td>799,722.03</td>
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<tr>
<td>Kern Oil</td>
<td>1,012,473.40</td>
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<tr>
<td>Koch Oil</td>
<td>129,861.00</td>
<td>42,378.50</td>
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<td>MacMillan Oil</td>
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<tr>
<td>Meek Oil</td>
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<td>Newhall Refining</td>
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<td>Powerine Oil</td>
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<tr>
<td>Witco Chemical</td>
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<td></td>
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<tr>
<td><strong>Total Barrels</strong></td>
<td><strong>9,015,549.21</strong></td>
<td><strong>1,414,275.79</strong></td>
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expand such relief and make it more onerous to Texaco would be entirely inappropriate and unfair. 9/

7. Finally, Comments were received 10/ urging the Commission to depart from the terms of the Consent Order requiring Texaco to hold separate Getty's oil and gas assets (other than those on Schedule A) for no more than a maximum of 120 days from publication of the Consent Order in the Federal Register, a commitment upon which Texaco relied in investing more than ten billion dollars. This provision -- and the entire Consent Order -- was the result of intense negotiations between Texaco and the FTC staff. Entirely apart from the unfairness to Texaco which such a turnabout would entail, any additional hold separate period would be artificial and wasteful. It causes unnecessary duplications of management and facilities. But more important, instead of the economy benefiting from the sharing of knowledge, ideas and experience among the personnel of these companies, there is a forced inability to communicate. The opportunities missed may never be known. Furthermore, the public interest is advanced when the management of a business is vigorous, cost conscious and innovative. Texaco is dedicated to these principles. However, one can hardly expect them to be the hallmark of operations assigned to the uncertain limbo of a hold separate period. Finally, and we submit most important, is the human factor. To sentence the Getty employees and their families to further prolonged uncertainty about their future would be cruel. Far from extending the hold separate period, it is respectfully submitted that the public interest warrants its being terminated promptly.

Respectfully yours,

[Signature]

9/ Indeed, the Commission may wish to consider whether the relief is not already too broad. Thus, while Getty was free to sell to the highest bidders on the best terms it could obtain in the market place, the Consent Order, Paragraph V, Schedule B, requires Texaco to sell such former customers of Getty at posted prices which are currently lower than market. A Comment from a refiner who did not purchase from Getty contends this will adversely affect its ability to compete with those refiners who will enjoy below market prices under the Consent Order. (Comment No. 121) Texaco is not in a position to evaluate the seriousness of this complaint. The Commission may well conclude that just as Getty has had pricing freedom, subject only to market forces, the same should prevail for Texaco as well.

10/ Necessarily these comments are prepared before all the comments are publicly available.
The Pacific West Coast is recognized as a crude deficit area. Therefore, leadership in pricing California crude oil in an upward direction actually lies outside of California. As California prices rise above the laid-down prices in California of other domestic (or foreign overland) crudes, the additional supplies of crude thereby attracted to California by such pricing will quickly drive California crude prices downward to a point where they are once again slightly less than the next cheaper source of outside crude.

We have proposed a general crude pricing policy which, in part, commits us to maintaining crude prices at a level to promote continued healthy growth of the petroleum industry. Applied to California, this can best be effected by maintaining a maximum crude price level commensurate with the considerations outlined above. Presently, the price of light crudes in California is generally at this level which suggests a price reduction of these crudes would not be in keeping with our proposed crude pricing policy and would not be in the best interests of the industry at the present time.

In this same proposed policy we recommend maintaining crude prices at a level to avoid unfavorable reactions by either public or governmental agencies. Currently, heavier crudes in California are priced at a level less than their true refining values. If it became generally recognized throughout the industry that these crudes were underpriced, this could create considerable unfavorable reaction which might ultimately lead to legal action against segments of the oil industry. Strong criticism might develop regarding property acquisitions made during this period of depressed heavy crude values. Furthermore, the present price level of heavy
crudes may also be considered contrary to the intent of the proposed policy to encourage continued healthy growth of the petroleum industry in California.

However, we recognize also that any net increase in crude prices without associated improved product realizations will result in a net financial loss to Western Operations. Consequently, before a heavy crude price increase can be justified it must be determined that the immediate financial loss which will result will ultimately be less than the long-term gain which will be realized.

Even if no major changes are presently contemplated in the California crude price structure revision of the current posted and unposted price schedule appears justified in the near future to include incorporate/following modifications:

a. Transfer selected unposted prices to the posted price schedule.

b. Drop selected inactive areas from the unposted schedule. Consolidate other postings.

c. Add certain areas not currently appearing on either price schedule.

d. Revise selected postings to bring crude prices more in line with actual crude values. For example: Consider modifying Fruitvale and West Coyote crude prices.

Consider making any revisions in crude price schedules effective at 6 A.M. rather than 7 A.M. to conform to the gauging day of the Pipe Line Department.

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Several months ago, we reviewed California crude prices and found that we could prepare a greatly simplified schedule and eliminate most of the inequities in crude pricing without materially changing our raw material costs. The schedules were taken out of the air and were not designed to stabilize crude margins.

It would appear that the ultimate objective in crude pricing would be to relate crude prices to refining value so that a reasonably consistent margin could be obtained from all crudes in all gravity ranges. Such a pricing program would tend to correct the problem we are faced with in our own house in the production of heavy versus light crude.

Based on Austin McCreery's 1966 last barrel crude values for the Torrey and Norwalk Streams, we plotted these values in the Los Angeles Basin and Santa Clara Valley then provided a price curve for each group. This price curve is at an approximate last barrel margin of 25¢ per barrel. (The Santa Clara Valley group is priced at 5¢ per barrel below the Los Angeles group.)

While the charts do not give a true picture because they are based on last barrel values, they do illustrate our often expressed point that crude prices in California have no relationship to value and that we can reasonably price all crude in each area at a single price. At the present time, we have 12 price columns in the Los Angeles group and 4 columns in the Santa Clara Valley group.

This chart also illustrates that the 5¢ to 7¢ price spread we have between gravities is wrong and that a consistent 3¢ spread appears about what it should be.

For comparison, we have shown the arithmetical average of the present posted prices in each group (dotted red line), and a listing of the present and suggested prices on the attached table.

If such a pricing policy were initiated by this company, what would we accomplish?
The stress laid on heavy crudes in refining operations is primarily because of its low price and high margin. Because of low return and relatively high production costs, the producer (our E&P Division for example) tends to develop high gravity-low margin production. By pricing all crude based on refining value, we tend to balance this problem between R&M and E&P and provide no premium for either group in the full gravity range. We believe the heavy crude situation developing in the Santa Maria and San Joaquin Valley is a good illustration of this in Union's house.

Our current 5-year Plan indicates a shortage of about 13,000 b/d heavy crude for the Santa Maria and Oleum cokers in 1968. E&P has no plans for increasing production. They advise that they "lose" 35¢ per barrel on Santa Maria crude. If E&P loses 35¢ and R&M makes $1.00, it appears that the corporation makes 65¢. If E&P doesn't produce the crude, R&M can't make the margin so the corporation doesn't make 65¢. To insure that the corporation makes the 65¢, why not "give" E&P 25¢ and R&M 40¢ so that each division can show a profit. To give E&P a 25¢ profit, raise the price 60¢ per barrel. If R&M doesn't give up some of its margin, there will be no crude and no margin to give up. This same simple arithmetic also prevails in the San Joaquin Valley. We are not producing this crude because of its low price. In today's market, there is a lot of heavy crude being produced by secondary recovery methods and today we can buy all we want. In 1968, however, all the new production being obtained today will probably disappear because of its being used by the various refiners and because it is improbable that producers can continue to stand the production expense at present prices.

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Attachments